

APPENDIX 4 – Sample Boilerplate Contract
ORGANIZATIONAL SUPPORT PROGRAM

CONTRACT BETWEEN CITY OF SAN DIEGO

AND Contractor

FOR FISCAL YEAR 2016

ARTS AND CULTURE TRANSIENT OCCUPANCY TAX ALLOCATIONS

This Contract **CONTRACT NUMBER** is made and entered into between City of San Diego, a municipal corporation (City), and **CONTRACTOR**, a nonprofit organization (Contractor), for City to provide funding to Contractor to provide arts and culture services pursuant to Council Policy 100-03 Transient Occupancy Tax.

RECITALS

- A. Contractor has applied for and been awarded Transient Occupancy Tax (TOT) funding from the Arts, Culture and Community Festivals (ACCF) category as provided for in Council Policy 100-03. Contractor is a legally constituted private nonprofit organization operating in the field of arts and culture.
- B. This Contract is made to further the purpose of the ACCF funding category of TOT: to enhance the economy and contribute to San Diego's reputation as a cultural destination by nurturing and maintaining art and culture institutions of national and international reputation; by supporting programs and projects that provide access to excellence in culture and the arts for residents and visitors; and by funding programs and events which enrich the lives of the people of San Diego and build healthy, vital neighborhoods.
- C. ACCF funding is allocated for either the Organizational Support Program (OSP) subcategory which provides annual, ongoing, general operating support for nonprofit, tax exempt arts and culture organizations with an emphasis on the delivery of programs and services that impact San Diego's quality of life and tourism; or the Creative Communities San Diego Program (CCSD) subcategory. CCSD encompasses the Festivals and Celebrations Program, which provides project support to community-based festivals, parades, and other celebrations, with an emphasis on projects which promote neighborhood pride and community reinvestment, and the Neighborhood Arts Program funds projects that make arts and culture activities more available and accessible in San Diego neighborhoods and encourage people of diverse backgrounds and ages to share their heritage and culture.
- D. The services to be performed by Contractor are of such nature that City is currently not performing and that the interests of City are better served by Contractor's activities than by the performance of such a program by City.

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The Parties agree as follows:

**ARTICLE I
SCOPE OF SERVICES AND TERM OF CONTRACT**

1.1 Scope of Services. Pursuant to Council Policy 100-03, Contractor shall provide arts and culture services that fulfill the purpose of the ACCF program in the Transient Occupancy Tax Fund:

- *To enhance the economy;*
- *To contribute to San Diego's national and international reputation as a cultural destination;*
- *To provide access to excellence in culture and the arts for residents and visitors;*
- *To enrich the lives of the people of San Diego; and*
- *To build healthy, vital neighborhoods.*

Services shall be provided in accordance with Contractor's mission and Contractor's Core Programs and Services [OSP] or Contractor's Project Details [CCSD] as described in Contractor's Fiscal Year 2016 application, numbered «APP_NUMBER» and incorporated into this Contract as **Exhibit A**.

1.1.1 Contractor's Mission. «MISSION»

1.2 Effective Date. This Contract is effective on the last date that it is signed by the parties and approved by City Attorney in accordance with Charter section 40. Services to be provided under this Contract shall occur between July 1, 2015 and June 30, 2016. Unless otherwise terminated, Contract shall terminate upon Contractor's receipt of final payment from City.

**ARTICLE II
CONTRACT ADMINISTRATOR**

2.1 Contract Administrator. The Executive Director of the City of San Diego Commission for Arts and Culture (Commission) is designated as City's Contract Administrator for purposes of this Contract. The Contract Administrator shall receive and process all notices, reports and invoices.

Notices to City shall be addressed to:

Dana Springs, Executive Director
City of San Diego Commission for Arts and Culture
1200 Third Avenue, Suite 924
San Diego, CA 92101-4106

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Contract Administrator. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract.

Notices to Contractor shall be addressed to:

ED First Name, Last Name, Title

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Contractor
Address Line
Address Line 2

ARTICLE III COMPENSATION

3.1 Amount of Compensation. City shall pay Contractor on a reimbursement basis for eligible expenses incurred and paid by Contractor in accordance with this Contract a total amount of **\$FY17 Contract Amount** . The funding awarded through this Contract comes from the **Funding Program Name** category of the Arts, Culture, and Community Festivals program in the Transient Occupancy Tax Fund.

3.1.1 Eligible Expenses. Pursuant to Council Policy 100-03, eligible expenses are those made to assist an organization in its annual operating program [OSP] or in its sponsorship of special events [CCSD]. City funding will not be used for capital or equipment outlay, for the purchase of awards, trophies, gifts, or uniforms, nor for the buildup of reserves.

3.1.2 Matching Requirement. Pursuant to Council Policy 100-03, for the purposes of this Contract, Contractor's matching obligation equals **\$CONTRACTOR MATCH AMOUNT**. Upon City's request, Contractor shall provide evidence of matching funds between July 1, 2015 and June 30, 2016 pursuant to Council Policy 100-03.

3.2 Manner of Payment. Contractor will be reimbursed in accordance with the terms and conditions specified in the Contract for expenses incurred during City's fiscal year (July 1, 2015 - June 30, 2016). Due to the timing of City's accounting procedures, invoices submitted after August 31, 2016 will not be paid. City reserves the right to temporarily withhold or adjust the final payment, subject to City's approval of the final performance report, financial disclosures, and any audits required of Contractor under this Contract. City's approval will not be withheld unreasonably.

3.2.1 Enrollment in Electronic Funds Transfer (EFT) Payment Option. Contractor will be given the option to enroll in electronic funds transfer to receive payments from City.

3.3 Invoicing. Contractor shall submit invoices (a.k.a. Requests for Payment) for reimbursement of eligible expenses in a standard form to be provided by City.

3.3.1 OSP Invoicing. Contractors in the OSP category shall submit invoices no more frequently than (1) time per three-month period, which means a maximum of four (4) invoices and a minimum of one (1) invoice shall be submitted between July 1, 2015 and August 31, 2016.

3.3.2 CCSD Invoicing. Contractors in the CCSD category shall submit final invoices for reimbursement no more than sixty (60) calendar days after the conclusion of the project or the date of Contract execution. Requests for payment shall be submitted no more than one (1) time per six-month period, which means a maximum of two (2) invoices and a minimum of one (1) invoice shall be submitted between July 1, 2015 and August 31, 2016.

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3.3.3 Invoice Detail. Contractor's invoices shall clearly itemize, describe and provide supporting evidence for each eligible expense incurred between July 1, 2015 and June 30, 2016.

3.3.4 Electronic Invoicing Option. Contractor will be given the option to submit invoices electronically.

3.4 Mandatory Reporting.

3.4.1 Final Performance Report. Contractor shall submit a final performance report in a format to be specified by City. Final performance reports must accompany the final invoice. City shall not approve Contractor's final invoice and release payment until Contractor has submitted, and City has approved, Contractor's final performance report.

3.4.2 Significant Changes in Operations. To promote public trust, Contractor shall notify City within fifteen (15) calendar days of significant changes to Contractor's operations. Examples of such include, but are not limited to, a change of Contractor's primary managing agent (e.g. Executive Director); a majority change in the membership of Contractor's board of directors; a change in Contractor's financial status such that fulfilling the terms of this Contract, including the matching funds requirement, are at risk of not being met; a change in Contractor's mission; or, Contractor receives written notification that a government agency has begun an investigation of Contractor that may result in a finding that Contractor is or was not in compliance with the laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by Contractor.

3.4.3 Financial Disclosure. Pursuant to Council Policy 100-03, Contractor shall submit the following financial disclosure documentation no later than August 31, 2016.

3.4.3.1 A Contractor receiving City funds in the amount of \$10,000 - \$74,999 within City's fiscal year shall submit copies of true, accurate and complete financial disclosure documentation evidencing the financial status of Contractor's last complete fiscal year within ninety (90) days of the end of that fiscal year. Such financial disclosure documentation shall include, but is not limited to, a statement showing the expenditure of City funds and Contractor's mandatory funding match for that fiscal year and a balance sheet showing all Contractor's revenues and expenditures for that fiscal year. A statement of activities and a statement of financial position for Contractor's last complete fiscal year will suffice.

3.4.3.2 A Contractor receiving City funds in the amount of \$75,000 - \$499,999 within City's fiscal year shall submit, in addition to the documents required by Section 3.4.3.1, audited financial statements for Contractor's last complete fiscal year within one hundred fifty (150) days of the end of that fiscal year. These disclosure documents must be prepared in accordance with generally accepted accounting principles (GAAP) and audited by an independent Certified Public Accountant in accordance with generally accepted auditing standards (GAAS). Upon written request by the Contractor, and in the sole discretion of the Contract Administrator, Contractor may be granted up to thirty (30) additional days to comply with this requirement.

3.4.3.3 A Contractor receiving City funds in the amount of \$500,000 or more within City's fiscal year, and if that funding represents more than 10% of the Contractor's annual

budget, shall submit, in addition to the documents required by Sections 3.4.3.1 and 3.4.3.2, salary and wage ranges for each of its job classifications, including actual executive salaries and benefits packages.

3.4.5 Impact Data. Upon City's request, Contractor shall provide City with data to use in the publication of the City's annual Arts and Culture Community and Economic Impact Report.

ARTICLE IV TERMINATION

4.1 City's Right to Terminate for Convenience. City may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to Contractor. The termination of the Contract shall be effective upon receipt of the notice by Contractor. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the contract. After filing of documents and completion of performance, Contractor shall deliver to City all data, drawings, specifications, reports, estimates, summaries, and such other information and materials created or received by Contractor in performing this contract, whether completed or in process. By accepting payment for completion, filing, and delivering documents as called for in this section, Contractor discharges City of all of City's payment obligations and liabilities under this Contract with regard to the affected performance.

4.2 City's Right to Terminate for Noncompliance and Default. If Contractor fails to comply with any law, policy or condition of this Contract, Contractor will be notified of such noncompliance and may be given an opportunity to come into compliance through additional and reasonably appropriate conditions as determined by City in its sole discretion. If City determines that Contractor's noncompliance cannot be remedied by imposing additional and reasonably appropriate conditions and constitutes default, City may take one or more of the following remedial actions, as appropriate in the circumstances.

4.2.1 Withhold Reimbursement. City may permanently withhold reimbursement.

4.2.2 Disallow Reimbursement. City may disallow (that is, deny the use of City funds all or part of the cost of the activity or action not in compliance.

4.2.3 Recovery of Funds. City may require the return of funds paid to Contractor during the term of this Contract.

4.2.4 Disqualification. City may recommend disqualification of Contractor from participating in future City contracts.

4.2.5 Disallow Acknowledgement. City may require that Contractor remove acknowledgement of City support.

4.2.6 Terminate Contract and Award. City may wholly or partly terminate this Contract and the award of funds.

4.2.7 Other Legal Remedies. City may take other remedies that may be legally available.

4.3 Termination for Bankruptcy or Assignment for the Benefit of Creditors. If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Responsibility for Damages. Contractor is responsible for all damage that occurs as a result of Contractor's fault or negligence or that of its employees, agents, or representatives in connection with the performance of this Contract. Contractor shall immediately report any such damage to people or property to the Contract Administrator.

5.2 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.2.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from subcontractors and suppliers, all purchases of materials and services from suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each subcontractor and supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.3 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm Contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.4 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and

regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.5 Representations and Warranties. Contractor represents and warrants that 1) Contractor has been assigned a valid Employer Identification Number (EIN) by the Internal Revenue Service; 2) according to the System for Award Management (SAM), Contractor holds an active registration status, is not a debarred company excluded from Federal procurement and non-procurement programs throughout the U.S. Government, is not excluded from receiving Federal contracts or certain subcontracts, and is not excluded from certain types of Federal financial and nonfinancial assistance and benefits during the performance of this Contract; 3) according to the State of California Department of Industrial Relations' Division of Labor Standards Enforcement (DLSE), Contractor is not barred from bidding on, accepting, or performing any public works contracts either as a contractor or subcontractor; 4) the status of Contractor's registration as a charity is current with the State of California Department of Justice's Office of the Attorney General during the term of this Contract; and 5) the status of Contractor's Statement of Information on file with the California Secretary of State is active during the term of this Contract. Contractors found to be making false representations and warranties shall be subject to remedies for noncompliance.

5.6 Taxpayer Identification Number and Certification. Contractor, if doing business with City for the first time, shall submit a completed Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification. Failure to submit said form will delay City's reimbursement payments to Contractor.

5.7 Acknowledging City. Contractor shall acknowledge City in advertisements, including but not limited to print, online and broadcast, using the Commission for Arts and Culture's logo and substantially the following credit line: "Financial support is provided by City of San Diego Commission for Arts and Culture." If City terminates this Contract, City may require that Contractor remove acknowledgement of City support from advertisements.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Intellectual Property Rights. If, in connection with the services performed under this Contract, Contractor or its employees, agents, or subcontractors, create or acquire authorship or ownership of artwork, audio recordings, blueprints, designs, diagrams, documentation, photographs, plans, reports, software, source code, specifications, surveys, system designs, video recordings, or any other original works of authorship, whether written or readable by machine (Intellectual Property Materials), all rights, titles, and interests of the Contractor or its employees, agents, or subcontractors in and to the content of the Intellectual Property Materials, including, but not limited to publication, and registration of copyrights, and trademarks in the Intellectual Property Materials, are the sole property and rights of Contractor.

6.1.1 City's License to Reproduce. Contractor grants to City, and other parties duly authorized by City, a nonexclusive, irrevocable and royalty-free license to reproduce any Intellectual Property Materials that are subject to copyright and were developed, or for which ownership was acquired, under this Contract during the period of performance. Any such authorized reproduction by

City or others under its control shall credit Contractor and may be used for educational, public relations, tourism and arts promotional purposes including, but not limited to, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions, and displaying, distributing, transmitting such reproductions to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard City activities.

6.1.1.1 Credit for Reproductions. City agrees that, unless Contractor requests to the contrary in writing, all formal references to, and reproductions of any Intellectual Property Materials that are subject to copyright and were developed, or for which ownership was acquired under this Contract during the period of performance shall credit Contractor with © Contractor's Name.

6.2 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Intellectual Property Materials, created or acquired by the Contractor under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Intellectual Property Materials referenced hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, Contractor shall indemnify, defend, and hold harmless City and its elected officials, officers, employees, agents, and representatives from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Intellectual Property Materials, supplies, equipment, services or works provided under this Contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

ARTICLE VII INDEMNIFICATION AND INSURANCE

7.1 Indemnification. To the fullest extent permitted by law, Contractor shall defend (with legal counsel reasonably acceptable to City), indemnify, protect, and hold harmless City and its elected officials, officers, employees, agents, and representatives (Indemnified Parties) from and against any and all claims, losses, costs, damages, injuries (including, without limitation, injury to or death of an employee of Contractor or its subcontractors), expense, and liability of every kind, nature and description (including, without limitation, incidental and consequential damages, court costs, and litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) that arise out of, pertain to, or relate to, directly or indirectly, in whole or in part, any performance of services under this Contract by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or anyone that either of them control. Contractor's duty to defend, indemnify, protect and hold harmless shall not include any claims or liabilities arising from the sole negligence or willful misconduct of the Indemnified Parties.

7.2 Insurance. Contractor shall not begin any performance under this Contract until it has (1) provided City insurance certificates and endorsements reflecting evidence of all insurance and

endorsements required and described herein; (2) obtained City approval of each insurance company or companies; and (3) confirmed that all policies contain the special provisions required herein (unless specifically waived by the Director of Risk Management or his designee). Contractor's liabilities, including but not limited to Contractor's indemnity obligations, under this Contract, shall not be deemed limited in any way to the insurance coverage required herein. Maintenance of specified insurance coverage is a material element of this Contract, and Contractor's failure to maintain or renew coverage or to provide evidence of renewal during the term of this Contract may be treated by City as a material breach of Contract. City reserves the right to require Contractor to submit copies of any policy upon reasonable request by City.

All policies shall include, and the insurance certificates shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

Contractor shall not modify any policy or endorsement thereto which increases City's exposure to loss for the duration of this Contract.

7.2.1 Required Types of Insurance. Unless otherwise provided, Contractor shall maintain insurance coverage at its own expense as follows:

7.2.1.1 COMMERCIAL GENERAL LIABILITY. Commercial General Liability (CGL) insurance written on an ISO Occurrence form CG_00_01_07_98 or an equivalent form providing coverage at least as broad which shall cover liability arising from any and all bodily injury, personal injury, advertising injury or property damage in the amount of \$1 million per occurrence and subject to an annual aggregate of \$2 million. There shall be no endorsement or modification of the CGL insurance limiting the scope of coverage for either insured claims or contractual liability. All defense costs shall be outside the limits of the policy. The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

7.2.1.2 COMMERCIAL AUTOMOBILE LIABILITY. For all of Contractor's automobiles including owned, hired and non-owned automobiles, Contractor shall keep in full force and effect Commercial Automobile Liability insurance written on an ISO form CA_00_01_12_90 or a later version of this form or an equivalent form providing coverage at least as broad for bodily injury and property damage for a combined single limit of \$1 million per occurrence. The insurance certificate shall reflect coverage for any automobile (any auto). The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

7.2.1.3 WORKERS' COMPENSATION. For all of Contractor's employees who are subject to this Contract and to the extent required by the applicable state or federal law, Contractor shall keep in full force and effect a Workers' Compensation policy. That policy shall provide a minimum of \$1 million of employer's liability coverage. The policy shall include, and the insurance certificate shall reflect, a 30-day non-cancellation clause that provides thirty (30) days written notice by certified mail to City prior to any material change or cancellation of any of said policies.

7.2.2 Deductibles. All deductibles or retentions on any policy shall be the sole responsibility of Contractor and shall be disclosed to City at the time the evidence of insurance is provided.

7.2.3 Acceptability of Insurers. Except for the State Compensation Insurance Fund, all insurance required by this Contract shall only be carried by insurance companies with a current rating of at least “A-, VI” by A.M. Best Company that are authorized by the California Insurance Commissioner to do business in the State of California, and that have been approved by City. City will accept insurance provided by non-admitted, “surplus lines” carriers only if the carrier is authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.2.4 Required Endorsements. Unless otherwise provided, the following endorsements to the policies of insurance are required to be provided to City before any performance is initiated under this Contract.

7.2.4.1 COMMERCIAL GENERAL LIABILITY ENDORSEMENTS.

Contractor’s CGL insurance policy shall include the following endorsements.

7.2.4.1.1 Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, Contractor’s CGL insurance policy must be endorsed to include as an insured City of San Diego and its respective elected officials, officers, employees, agents and representatives with respect to liability arising out of (a) ongoing operations performed by Contractor or on Contractor’s behalf, (b) Contractor’s products, (c) Contractor’s work, including but not limited to Contractor’s completed operations performed by Contractor or on Contractor’s behalf, or (d) premises owned, leased, controlled or used by Contractor.

7.2.4.1.2 Primary and Non-Contributory Coverage. Contractor’s CGL insurance policy must be endorsed to provide that the insurance afforded by Contractor’s policy is primary to any insurance or self-insurance of City and its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by City and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor’s insurance and shall not contribute to it.

7.2.4.1.3 Severability of Interest. Contractor’s CGL insurance policy must be endorsed to provide that Contractor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability and shall provide cross-liability coverage.

7.2.4.2 COMMERCIAL AUTOMOBILE LIABILITY ENDORSEMENTS.

Contractor’s Commercial Automobile Liability insurance policy shall include the following endorsements.

7.2.4.2.1 Additional Insured. To the fullest extent allowed by law including but not limited to California Insurance Code Section 11580.04, Contractor’s Commercial

Automobile Liability insurance policy must be endorsed to include as an insured *City of San Diego and its respective elected officials, officers, employees, agents and representatives* with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of Contractor.

7.2.4.2.2 Primary and Non-Contributory Coverage. Contractor's Commercial Automobile Liability insurance policy must be endorsed to provide that the insurance afforded by Contractor's policy is primary to any insurance or self-insurance of City and its elected officials, officers, employees, agents and representatives as respects operations of the named insured. Any insurance maintained by City and its elected officials, officers, employees, agents and representatives shall be in excess of Contractor's insurance and shall not contribute to it.

7.2.4.2.3 Severability of Interest. Contractor's Commercial Automobile Liability insurance policy must be endorsed to provide that Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability and shall provide cross-liability coverage.

7.2.4.3 WORKERS' COMPENSATION ENDORSEMENTS. Contractor's Workers' Compensation insurance policy shall include the following endorsements.

7.2.4.3.1 Waiver of Subrogation. Contractor's Workers' Compensation insurance policy must be endorsed to provide that the insurer will waive all rights of subrogation against *City of San Diego and its respective elected officials, officers, employees, agents and representatives* for losses paid under the terms of this policy which arise from Contractor's performance of work for City.

7.2.5 Reservation of Rights. City reserves the right, from time to time, to review Contractor's insurance coverage, limits, deductibles and self-insured retentions to determine if they are acceptable to City. City will reimburse Contractor for the cost of the additional premium for any coverage requested by City in excess of that required by this Contract without overhead, profit, or any other markup.

7.2.6 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.2.7 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

ARTICLE VIII COMPLIANCE WITH LAWS AND POLICIES

8.1 California Public Records Act, Government Code Section 6250 et seq. Pursuant to the California Public Records Act, all documents related to the funding request, including, but not limited to, the contents of this Contract, application materials, expenditure documentation, and any documents pertaining to the performance of the Contract are public records and, therefore, subject to disclosure unless a specific exemption in the California Public Records Act applies. Contractor shall acknowledge (**Exhibit B**) and comply with the California Public Records Act.

8.2 Compliance with City's Equal Opportunity Contracting Program (EOCP).

Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

8.3 Nondiscrimination in Contracting, San Diego Municipal Code Section 22.3501 et seq. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring, or treatment of subcontractors, vendors, or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

8.3.1 Compliance Investigations. Upon City's request, Contractor shall provide to City, within sixty (60) calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five (5) years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the contract and may result in contract termination, debarment, and other sanctions.

8.4 Equal Benefits Ordinance, San Diego Municipal Code Section 22.4301 et seq.

Contractor shall comply (**Exhibit C**) with the Equal Benefits Ordinance requirements set forth in SDMC 22.4301 et seq. The Contractor shall notify employees of Contractor's equal benefits policy at the time of hire and during open enrollment periods, and shall post a copy of the following statement in a conspicuous manner in an area frequented by employees: *During the performance of a contract with City of San Diego, this employer will provide equal benefits to its employees with spouses and its employees with domestic partners. Contact City of San Diego at (619) 533-3948 for more information.* Contractor shall give City access to documents and records sufficient for City to verify that Contractor is in compliance with the Equal Benefits Ordinance. Failure to maintain equal benefits is a material breach of this Contract.

8.5 Contractor Standards, San Diego Municipal Code Section 22.3004 (c). Contractor shall comply with all applicable local, state and federal laws, including, but not limited to, health and safety, labor and employment, and licensing laws that affect the Contractor's employees, agents, or subcontractors, worksite or performance of the Contract. Contractor shall notify City within fifteen (15) calendar days upon receiving written notification that a government agency has begun an investigation of Contractor that may result in a finding that Contractor is or was not in compliance with the laws, or that there has been a finding by a government agency or court of competent jurisdiction of a violation of such laws by Contractor. Initiation of an investigation is not, by itself, a basis for a determination of non-responsibility by City.

8.6 Noise Abatement and Control, San Diego Municipal Code Section 59.5.0101 et seq. Contractor shall operate, conduct, or construct in compliance with City's Noise Abatement and Control ordinances.

8.7 Storm Water Management and Discharge Control, San Diego Municipal Code Section 43.0301 et seq. Contractor shall comply with the City's Storm Water Management and Discharge Control laws, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing work under this Contract. Contractor shall comply with the City's Jurisdictional Urban Runoff Management Plan encompassing City programs and activities designed to prevent and reduce storm water pollution within City boundaries, adopted by San Diego Resolution R-303351 and incorporated into this Contract by this reference. Contractor shall comply with each City facility or work site's Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any damage to the storm water collection system and environment.

8.8 Council Policy 100-03 Transient Occupancy Tax. Contractor shall comply with City's TOT requirements set forth in Council Policy 100-03, adopted by San Diego Resolution R-183022 and incorporated into this Contract by this reference.

8.9 Council Policy 100-04 Americans with Disabilities Act/City Contractors. Contractor shall comply (**Exhibit D**) with City's Americans with Disabilities Act Compliance/City Contracts requirements set forth in Council Policy 100-04, adopted by San Diego Resolution R-282153 and incorporated into this Contract by this reference. Contractor shall comply with all accessibility requirements under the Americans with Disabilities Act (ADA) and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this Contract shall contain language which indicates the subcontractor's agreement to abide by the provisions of Council Policy 100-04 and any applicable access laws and regulations.

8.10 Council Policy 100-17 Drug-Free Workplace/City Contractors. Contractor shall comply (**Exhibit E**) with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, adopted by San Diego Resolution R-277952 and incorporated into this Contract by this reference.

8.11 Lobbying and Political Activities. Contractor shall not use, and shall require its subcontractors not to use, any of the funds, personnel, or materials received in connection with this Contract, to influence, or attempt to influence, any governmental decision or election in any manner, whatsoever. This prohibition shall apply to any decision of any kind to be made by any electorate, legislative body, agency, bureau, board, commission, district, or any other instrument of federal, state, or local government. The term, "influence or attempt to influence," shall mean the making, with the intent to influence, any communication to, or appearance before, any officer, employee, or appointee of any governmental entity, as well as any communication made to any electorate, regarding any ballot measure or candidate election.

ARTICLE IX CONFLICT OF INTEREST

9.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices, including but not limited to California Government Code sections 1090, et seq. and 81000, et seq. Contractor shall comply with City's applicable Ethics Ordinance requirements set forth in SDMC 27.3501 et seq. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary disclosure documents.

9.2 Contractor's Responsibility for Employees and Agents. Contractor shall establish and make known to its employees, agents, or subcontractors appropriate safeguards to prohibit employees, agents, or subcontractors from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

9.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

9.4 Certification of Non-Collusion. Contractor certifies that (1) Contractor's bid or proposal (a.k.a. application for funding) was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

9.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE X DISPUTE RESOLUTION

10.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

10.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

10.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

10.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

10.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XI MANDATORY ASSISTANCE

11.1 Mandatory Assistance. If a third party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its employees, agents, or subcontractors agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

11.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing mandatory assistance. If, however, the fees incurred for the mandatory assistance are determined, through resolution of the third party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, employees, agents, or subcontractors, Contractor shall reimburse City for all fees paid to Contractor, its employees, agents, or subcontractors, for mandatory assistance.

11.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its employees, agents, or subcontractors may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of mandatory assistance to City are not reimbursable.

ARTICLE XII MISCELLANEOUS

12.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

CONTRACT NUMBER

12.2 Exhibits Incorporated. All Exhibits referenced herein are hereby incorporated into this Contract.

12.3 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

12.4 Independent Contractors. Contractor and any subcontractors employed by Contractor shall be independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing the services, or to exercise any control over the performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

12.5 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

12.6 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

12.7 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for Contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

12.8 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

12.9 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

12.10 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

12.11 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a

waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

12.12 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

12.13 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

12.14 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect.

12.15 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

12.16 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

12.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

12.18 No Third Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

12.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

12.20 Integrated Agreement. This Contract and the Exhibits and references incorporated herein fully express all understandings of the Parties concerning the matters covered in this Contract. All prior negotiations and agreements are merged into this Contract.

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CONTRACT NUMBER

IN WITNESS WHEREOF, this Contract is executed by City of San Diego, acting by and through its Mayor or designee, pursuant to SDMC section 22.3207, authorizing such execution, and by Contractor.

Contractor

A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date

CITY OF SAN DIEGO,
A Municipal Corporation

Kristina Peralta
Interim Director, Purchasing and Contracting

Date

APPROVED AS TO FORM:

JAN I. GOLDSMITH,
City Attorney

Deputy City Attorney

Date

CONTRACT NUMBER



CALIFORNIA PUBLIC RECORDS ACT ACKNOWLEDGEMENT

CONTRACT NUMBER: «CONTRACT_NUMBER_PREFIX»-«CONTRACTOR_EIN»
CONTRACTOR: «CONTRACTOR_LEGAL_ORG_NAME»

The undersigned duly authorized representative, on behalf of the named Contractor declares and acknowledges the following:

The contents of this contract and any documents pertaining to the performance of the contract are public records, and therefore subject to disclosure unless a specific exemption in the California Public Records Act applies.

If a Contractor submits information clearly marked confidential or proprietary, City of San Diego (City) may protect such information and treat it with confidentiality only to the extent permitted by law. However, it will be the responsibility of Contractor to provide to City the specific legal grounds on which City can rely in withholding information requested under the California Public Records Act, should City choose to withhold such information.

General references to sections of the California Public Records Act will not suffice. Rather, Contractor must provide a specific and detailed legal basis, including applicable case law that clearly establishes the requested information is exempt from the disclosure requirements of the California Public Records Act.

If Contractor does not provide a specific and detailed legal basis for withholding the requested information within a time specified by City, City will release the information as required by the California Public Records Act and Contractor will hold City harmless for release of this information.

It will be Contractor’s obligation to defend, at Contractor’s expense, any legal actions or challenges seeking to obtain from City any information requested under the California Public Records Act withheld by City at Contractor’s request. Furthermore, Contractor shall indemnify City and hold it harmless for any claim or liability, and defend any action brought against City, resulting from City’s refusal to release information requested under the Public Records Act withheld at Contractor’s request.

Nothing in this Contract creates any obligation for City to notify Contractor or obtain Contractor’s approval or consent before releasing information subject to disclosure under the California Public Records Act.

CONTRACTOR
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date

CONTRACT NUMBER

FY16

**EQUAL BENEFITS ORDINANCE
CERTIFICATION OF COMPLIANCE**



EXHIBIT C
CITY OF SAN DIEGO
EQUAL BENEFITS PROGRAM
202 C Street, MS 9A, San Diego, CA 92101
Tel (619) 533-3948 Fax (619) 533-3220

COMPANY INFORMATION

Company Name: _____ Contact Name: _____
Company Address: _____ Contact Phone: _____
Contact Email: _____

CONTRACT INFORMATION

Contract Title: _____ Start Date: _____
Contract Number (if no number, state location): _____ End Date: _____

SUMMARY OF EQUAL BENEFITS ORDINANCE REQUIREMENTS

The Equal Benefits Ordinance [EBO] requires City to enter into contracts only with contractors who certify they will provide and maintain equal benefits as defined in San Diego Municipal Code §22.4302 for the duration of the contract. To comply:

- Contractor shall offer equal benefits to employees with spouses and employees with domestic partners.
 - Benefits include health, dental, vision insurance; pension/401(k) plans; bereavement, family, parental leave; discounts, child care; travel/relocation expenses; employee assistance
 - Any benefit not offered to an employee shall also not be offered to a domestic partner.
- Contractor shall post notice of firm's benefits during open enrollment periods.
- Contractor shall allow City access to all benefit plans.
- Contractor shall submit *EBO Certification* to the City.

NOTE: This summary is provided for contractor information only.

**LEAVE THIS FORM BLANK:
EBO Certification of Compliance form
no longer required per
September 25, 2015 memo
from Nora Nugent and Kristina Peralta**

Please indicate your firm's compliance:

- I affirm **compliance** with the Equal Benefits Ordinance.
 - Provides equal benefits to spouses and domestic partners.
 - Provides no benefits to spouses or domestic partners.
 - Has no employees.
 - Has collective bargaining agreement(s) in place prior to January 1, 2011, that has not been renewed or expired.
- I request City's approval to pay affected employees a **cash equivalent** in lieu of equal benefits and verify my firm made a reasonable effort but is not able to provide equal benefits upon contract award. I agree to notify employees of the availability of a cash equivalent for benefits available to spouses but not domestic partners and to continue to make every reasonable effort to extend all available benefits to domestic partners.

It is unlawful for any contractor to knowingly submit any false information to City regarding equal benefits or cash equivalent associated with the execution, award, amendment, or administration of any contract. [San Diego Municipal Code §22.4307(a)]

Under penalty of perjury under laws of the State of California, I certify the above information is true and correct. I further certify that my firm understands the requirements of the Equal Benefits Ordinance and will provide and maintain equal benefits for the duration of the contract or pay a cash equivalent if authorized by City.

Name/Title of Signatory _____ Signature _____ Date _____

FOR OFFICIAL CITY USE ONLY

Receipt Date: _____ EBO Analyst: _____ Approved Not Approved – Reason: _____

rev 02/15/2011

CONTRACT NUMBER



**AMERICANS WITH DISABILITIES ACT (ADA)
COMPLIANCE CERTIFICATION**

CONTRACT NUMBER:
CONTRACTOR:

I hereby certify that I am familiar with the requirements of San Diego City Council Policy No.100-04 regarding the Americans with Disabilities Act (ADA), and that «**CONTRACTOR_LEGAL_ORG_NAME**» has in place workplace program that complies with said policy. I further certify that each subcontract for this project contains language which indicates the subcontractor will abide by the provisions of the policy as outlined.

CONTRACTOR
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Date

CONTRACT NUMBER



CERTIFICATION FOR A DRUG-FREE WORKPLACE

CONTRACT NUMBER:

CONTRACTOR:

I hereby certify that **CONTRACTOR** shall comply with City’s Drug-Free Workplace requirements set forth in Council Policy 100-17.

CONTRACTOR shall publish, and post in a place of prominence, a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person’s or organization’s workplace and specifying the actions that will be taken against employees for violations of the prohibition.

CONTRACTOR shall establish a drug-free awareness program to inform employees about all of the following:

- (a) The dangers of drug abuse in the workplace
- (b) The person’s or organization’s policy of maintaining a drug-free workplace
- (c) Any available drug counseling, rehabilitation, and employee assistance programs
- (d) The penalties that may be imposed upon employees for drug abuse violations

CONTRACTOR shall include language in each subcontract that elicits the subcontractor’s agreement to abide by the provisions of Council Policy 100-17.

CONTRACTOR,
A Nonprofit Organization

Authorized Signature

Printed Name and Title

Dat

CONTRACT NUMBER

CONTRACT NUMBER